

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

**FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE-  
INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING**

**Reply Comments of the Wyoming Public Service Commission**

September 6, 2011

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## **I. INTRODUCTION AND SUMMARY**

The genius of a federal system lies in the capacity for local flexibility to address distinct local problems, consistent with overarching federal policies. Based on its direct experience, the Wyoming Public Service Commission (WyPSC) believes the Federal Communications Commission's (FCC) apparent policy direction will have practical consequences foreseen by few; these consequences presage a wholesale failure of FCC policy in high-cost service areas at the margins of the FCC's broadband initiative. The WyPSC believes that the FCC should consider accommodating reasoned state-based alternatives, particularly with respect to access charges.

The WyPSC also questions the legal basis for the proposed access charge initiative, and is broadly supportive of the position articulated by NARUC and its comments on the above-captioned proceedings. We also believe the proposed policy is likely to frustrate the mandates of Section 254 of the federal Telecommunications Act of 1996, which has long been the subject of litigation between the FCC and the WyPSC in the 10<sup>th</sup> Circuit.

## **II. BACKGROUND**

The economics of universal service in Wyoming is driven by very high costs, in large part because its small population is widely dispersed. According to the 2010 United States Census, Wyoming is ranked second lowest in population density and lowest in population.<sup>1</sup>

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<sup>1</sup> <http://2010.census.gov/2010census/data/> visited April 11, 2011. Furthermore, Wyoming has 99 incorporated municipalities: only 4 cities, including our 2 largest -- Cheyenne (59,466) and Casper (55,316) -- have populations

The WyPSC has previously explained to the FCC how models favored by the FCC break down in sparsely populated rural areas.<sup>2</sup> In doing so, the FCC models understate the overall costs of investments necessary to establish and support reasonably comparable rates and service in rural areas. As the WyPSC contemplates the design of reforms both explicit and implicit in the FCC's requests for comment, we conclude that voice grade wireline service will remain the only realistic choice for a substantial portion of the public for many years to come, since a national shift to broadband universal service support will not provide adequate incentives for the markets to provide ubiquitous broadband service.

As the FCC would know from litigation with the WyPSC, Wyoming's perspective is that FCC policies have not yet been successful in stimulating a uniform market response to provide long-lasting investment in rural areas. The WyPSC presently has an open docket designed to address one non-rural carrier's continued reliance on Anaconda technology, not manufactured for decades, to meet the needs of customers in high cost areas; the problem of failure at the margins is real. We have no quarrel with the FCC's general vision for a broadband future, but our practical experience is that this vision falls short of the universal service required by federal statute.

### **III. DISCUSSION**

#### **A. State Effort**

Unlike many other states, Wyoming adopted legislation in 1995 to rebalance rates, rates, making local exchange rates cost-based with almost all residential and business lines at parity.

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greater than 25,000; 56 have populations under 1000 (353 average) and 33 others have populations under 10,000 (3393 average).

<sup>2</sup> In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; and High-Cost Universal Service Support, WC Docket No. 05-337; Comments of the Wyoming Public Service Commission, July 12, 2010.

At the same time, it established a state universal service fund. Wyoming has also acted to reduce implicit subsidies in intrastate access charges; the Wyoming Telecommunications Act sets intrastate originating and terminating switched access rates at \$0.03 per minute, subject only to preemption by conflicting federal mandate.

Wyoming has a working universal service fund based on rules which have been in place since 1996. All federal universal service support is credited to statutorily-defined high-cost basic local exchange service. Looking forward, we have already advised the legislature that the statute governing our universal service fund must be revised to address changes in the market, federal regulatory policy, and technology. The fund is not presently designed to support broadband or technologically advanced wireline services.

#### **B. Federal Preemption –FCC Preemption of State-authorized Access Charges Will Be Counterproductive in High Cost Rural Areas**

The FCC is making a serious, and unnecessary, mistake by adopting a nationwide originating and/or terminating access charge of \$0.0007 in contravention of a reasonable state statute authorizing carriers to charge more.

By statute, Wyoming authorizes intrastate originating and terminating access charges of up to \$0.03; carriers may adopt lower access charges if they wish. The legislature adopted this standard in 2007 after lengthy consideration of carrier costs, with particular attention to the costs of rural wireline-based carriers. All Wyoming carriers have met statutory deadlines for reduction of charges to meet the statutory standard.

The FCC's mistake is to ignore the economic realities of Wyoming, and likely of other states, viewed with the granularity natural to state-based regulators. As we have already said, the FCC models break down at smaller scale. But the concern goes beyond models.

The FCC's vision would supplant wireline service with broadband, and it appears that legacy non-rural carriers are prepared to adapt their business models to this vision. At the same time, this does not mean that CenturyLink, the ILEC serving Wyoming's principal population centers, will invest in broadband infrastructure unless it is economically opportune to do so. An ILEC not challenged by a broadband competitor will continue to meet service responsibilities with wireline infrastructure. This infrastructure often has been deteriorating for years. The FCC's initiative may provide incentives to accelerate this deterioration by obliging the ILEC to use federal universal service funds to build out broadband.

Wyoming's insight is based on years of experience with three cost-related zones surrounding a core base rate area for each of the cities and towns served by the ILEC. The three zones are designated 1, 2, and 3, with Zone 1 being contiguous to the base rate area, Zone 2 being contiguous to Zone 1 and further from the base rate area, and Zone 3 being a large high-cost area beyond Zone 2.

With the passage of time and market consolidation, the sole meaningful broadband competition for the ILEC has proven to be a cable-based provider which has concentrated its investment in base rate areas, extending in some circumstances into Zone 1. The cable-based provider has shown interest in providing service beyond Zone 1 only in Wyoming's relatively uncommon but relatively dense (and thus economically opportune) pockets. It makes no pretense of providing ubiquitous broadband service to existing high cost areas.

Assuming for the moment that federal universal service is re-oriented to promoting broadband based services, the WyPSC sees the likely result being investment that supports the ILEC's competitive position with respect to the cable provider. That is the only economically sensible result, given the two competitors and the likely availability of funds over time. The

ILEC will presumably attempt to circumscribe the competitive incursion of the cable company with investments which strengthen the ILEC's cost structure outside the present core area. One of Wyoming's largest ILECs has suggested that it may make investments as far out as Zone 2, but we surmise that this may fundamentally be no more than a comment on growth patterns which overlay the established zones in some areas.

If this scenario were to come to pass, we see this as leaving two types of areas outside the broadband-competitive core. Based on our experience, one area will likely continue to be served by wireline infrastructure with a useful life outlasting the FCC's proposed transition to broadband. The other, not clearly defined in the FCC's plans, will be more remote areas for which satellite service is planned. We are familiar to a degree with satellite service as it presently exists in Wyoming markets, and we are not particularly enamored of the satellite solution.<sup>3</sup> But let us focus for the moment on the areas in Zones 2 and 3 which will continue to have wireline infrastructure.

If the most likely version of the FCC's broadband universal service initiative comes to pass, these more remote areas will be deprived of federal universal service support, and they will be hard pressed to compete for company resources. It is not a foregone conclusion that the ILEC would wish to continue serving these areas. Assuming that the ILEC or some new provider may be willing to do so, our judgment is that they may be unable to develop a compelling business model with originating and/or terminating access at \$0.0007 per minute, unless there are radical,

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<sup>3</sup> As explained in FAQ number 29 on [www.wildblue.com](http://www.wildblue.com), (visited August 24, 2011) the impact of latency on internet phone calls is as follows: "The WildBlue system is engineered to help offset the impact of latency, which is the delay caused by sending signals from the earth to the satellite and back again. However, there is a delay as the signal travels up to the satellite, back down to the gateway, up to the satellite and back down to your modem. For most applications this latency does not affect performance, however, there are some applications like voice over IP (telephone service delivered over the Internet, also known as VOIP). Or real-time interactive gaming, where latency will have a noticeable effect on performance over the WildBlue network, as it would on any satellite-delivered service."

and likely unsupportable<sup>4</sup> increases in state universal service support directed exclusively to wireline. In other words, we anticipate that developing FCC policy will create substantial problems in Wyoming, while simultaneously foreclosing the use of a tested tool available to help in addressing the problem, access charges.

While we cannot judge whether access charges of \$0.03 would support a business model for service to the wireline infrastructure areas, we believe that [i] the probability is higher than if charges are restricted to \$0.0007 per minute, and [ii] further adjustments to the \$0.03 charges could be made by the state legislature after further study and experience.

We note that the three major national carriers with the greatest interest in reducing access charges to \$0.0007 are not major investors in Wyoming broadband infrastructure. The only interest articulated to the WyPSC by one such provider concerned the administrative efficiency to be realized by not having to adjust access charges on a state-by-state basis. There is no evidence that this benefit to large carriers will outweigh likely detriment to Wyoming.

Turning to the rural carriers, we acknowledge that some carriers serving Wyoming have joined in support of the ABC program and its rate of return element. At the same time, these carriers have affirmed to us that \$0.0007 does not cover their costs, consistent with the representations they made to the Wyoming legislature when it set the \$0.03 limit. As we understand it, these carriers were willing to accept the ABC program as a settlement, relying on the advice of FCC staff that the FCC, in the absence of rural carriers' acquiescence, would reduce access charges below \$0.0007 and adopt other measures unfavorable to rural carriers.

As long as state policy favors a cost-based ceiling of \$0.03 on access charges, we see no compelling reason why such charges should not be available to rural wireline carriers.

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<sup>4</sup> Remembering our very small telecommunications markets.



The WyPSC is not unsympathetic to the myriad problems the FCC faces. At the same time, we note that the justifications for \$0.0007 are not compelling in this state, where all carriers face high costs, and where the FCC's national model breaks down. We also note that Wyoming is not a hotbed for the current abuses that have prompted the FCC to act. For example, there are no reported instances of traffic pumping in Wyoming. Historically, the FCC has been willing to accommodate legitimate state interests such as Wyoming's unusually dispersed population; we urge the FCC to continue to do so by allowing carriers to rely on state statute when setting access charges.

1. The FCC Should Defer to a Reasonable State Statute Setting Access Limits

The WyPSC urges the FCC not to include transport charges in its reform initiative. As we have said, Wyoming is an exceptionally rural state with long distances between towns and a very small population. One of our independent carriers must transport its long distance traffic more than 340 miles, and its facilities investments should not be stranded. Diminishing transport revenues will harm many Wyoming carriers – especially the smaller ones. Even with their history of rapid deployment of advanced technology and high levels of consumer satisfaction, it will diminish their ability to continue in business. Here, the perfect is the enemy of the excellent.

Since the terminating carrier has more market power over terminating switched access rates than it has over originating switched access rates, it makes sense not to reduce originating switched access to \$0.0007, allowing market forces to discipline originating switched access charges. Interexchange carrier (IXC) access customers do not have alternative means of terminating traffic other than over the terminating carrier's facilities. This is because the called consumer may or may not be subscribed to the IXC's services. In practice, the IXC really has no choice but to pay at the moment when it seeks to terminate a call. On the other hand, if an IXC

finds that its calling consumer is a customer of an incumbent local exchange company (ILEC) with high originating switched access charges, then the access customer may be able to effectively mount a “rescue” of the calling consumer by helping them to switch local carriers.

The difference between Wyoming’s \$0.03 and \$0.0007 is that our \$0.03 rate was established by our legislature to resolve complex disagreements about the parameters for retail rates in Wyoming’s challenging environment. The Wyoming Legislature was well suited to develop a reasonable rate scheme that works for Wyoming

The FCC’s universal national rate is not cost-based, and makes no pretense of addressing the problems that must be addressed in areas where high cost wireline infrastructure remains the only means of service for the near future. It thus fails to address a predictable problem, and simultaneously sweeps away longstanding precedent. The WyPSC believes it would be far wiser to leave some authority to the states to address problems critical at the economic margins of the telecommunications industry.

The ABC Plan justification for preemption of state switched access rates is vague reference to reciprocal compensation requirements under the market opening provisions of Section 251 governing interconnection, specifically Subsection 251(b)(5).<sup>5</sup> The ABC Plan’s legal analysis is in direct conflict with Congress’ clear mandate expressed in Subsection 251(c)(3). We agree with NARUC’s initial comments on this issue.

Determining the parameters of intrastate rates and setting them is the sphere of authority of the Wyoming Legislature and its statutorily created agency, the Wyoming Public Service Commission. Wyoming has a stake in small carriers with their own cost structures and specific business plans providing service in Wyoming. Armed with location-specific business plans,

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<sup>5</sup> Attachment 5, of the ABC Plan at pages 9 through 17.

several of our small rural rate-of-return carriers have, in many cases, already successfully deployed high speed broadband services to nearly 100% of their consumers.<sup>6</sup> The stability of intrastate switched access rates is one of the fundamental facts these rural carriers have relied on to undertake this technologically sophisticated broadband infrastructure construction and to repay debt incurred in doing so. The WyPSC does not dictate business models and it would wise for the FCC to defer to our legislatively determined rate of \$0.03 per minute for intrastate switched access.

The imposition of a \$0.0007 rate would arguably amount to a much more serious preclusion of state authority than what it contemplated and discouraged by §251(C)(3). In Wyoming, rather than “the enforcement of any regulation, order, or policy of a State Commission” that “establishes access and interconnection obligations of local exchange carriers,” it is instead the public policy of the state as determined by the Wyoming Legislature and duly enacted in statute that might be precluded. The cautionary nature of §251(C)(3) deserves heightened consideration where the Wyoming Legislature, a body legally superior to the WyPSC, is the author of the policy.

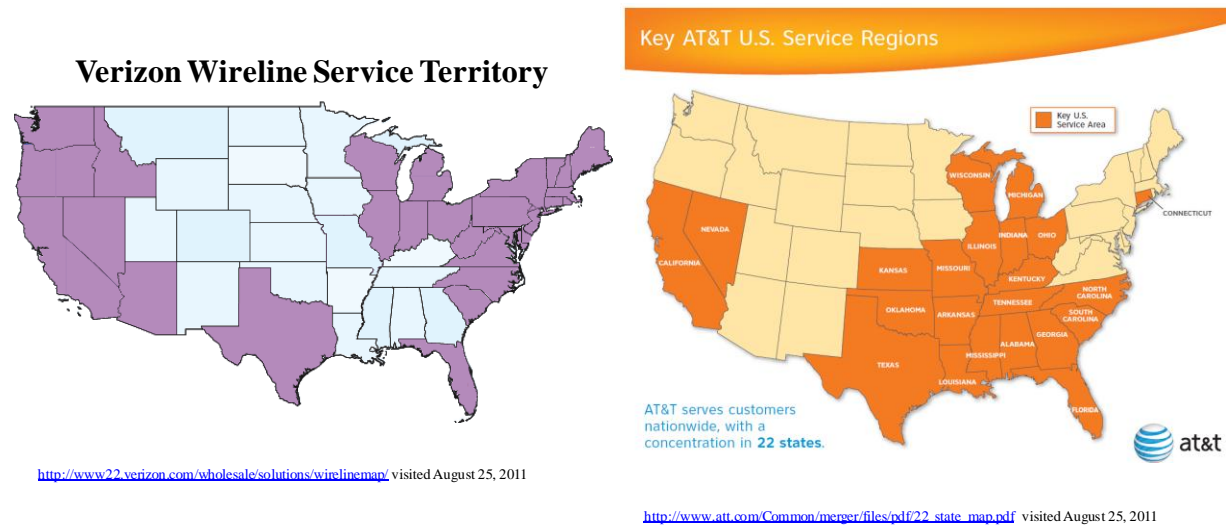
Most of our rate-of-return regulated, rural, high-cost carriers do not have an interstate business plan or structure. The WyPSC accordingly questions whether the FCC claims sufficient insight into local conditions to impose the changes described in its plans and the ABC Plan. **Figure 1** illustrates the service territory of the two largest wireline local exchange service providers in the nation, Verizon and AT&T, who are among the most vocal proponents of the ABC Plan. Looking at **Figure 1**, it is obvious that AT&T and Verizon wireline interests do not lie in Wyoming. Verizon Wireless relinquished CETC status for its subsidiary operations in

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<sup>6</sup> Note that the FCC’s Seventh Broadband Report released May 20, 2011, in FCC Docket No. GN Docket No. 10-159, contains data at the county and census tract level as the unit of measurement, and the FCC used to determine where there is a broadband gap.

Wyoming in 2010; and AT&T Wireless has not indicated any interest in being a CETC in Wyoming.

**Figure 1**



Legacy Embarq and CenturyTel are both considered high-cost study areas in Wyoming, with high-cost loop support going to all of their access lines. In legacy Qwest exchanges in Wyoming, access lines are distributed through [i] a base rate area, which is typically roughly coterminous with the city limits, and [ii] which is surrounded by three concentric rings of higher and higher cost areas called zones, with Zone 3 being the furthest from town and the most expensive to serve as distances increase and household densities progressively diminish. Thus, CenturyLink's estimated high-cost (least profitable) 43,837 lines constitute just 0.29% of all of CenturyLink's 15,359,100 lines.

## 2. The Economic Reality of Competition in Wyoming Supports a Degree of Deference to the State Statute on Access Charges

Currently Qwest, our largest price-cap carrier, faces vigorous competition by Cablevision/Bresnan in urban base rate areas of its largest exchanges. Wyoming ILECs face little wireline competition in high-cost, underserved areas. Consequently, where there is

competition, the incumbent is obliged to focus investment dollars and business strategy, in core (base rate) areas, and adjacent growth zones.

The FCC plan and ABC plan contemplate competition in price-cap carrier territories with grants for underserved and unserved areas. At the same time, under the ABC Plan, no carrier is incentivized to invest in broadband (or even modern quality voice service) in our highest-cost areas, such as Zone 3 in Qwest exchanges.<sup>7</sup> Under the FCC proposals and the ABC plan, price-cap carriers with multi-state business interests will likely focus investment in base rate areas and in the economically attractive areas subject to broadband competition.

The green-shaded areas in **Figure 2** show the availability of Qwest's broadband services in the Cheyenne exchange. Generally speaking, the densest green shaded area inside the red circle is within the base rate area and the city limits. However, note that Qwest does provide broadband service in areas outside of the city where the density of household units becomes increasingly sparse, roughly equating to Zones 1 and 2 outside the base rate area. Also, in the southeast quadrant in the neighborhood of Burns (population 301) and Pine Bluffs (population 1,171), notice the deployment of wireline broadband by a neighboring rate-of-return carrier, RT Communications.<sup>8</sup> Qwest does not have a broadband plan in its highest cost areas, which are in Zone 3.<sup>9</sup>

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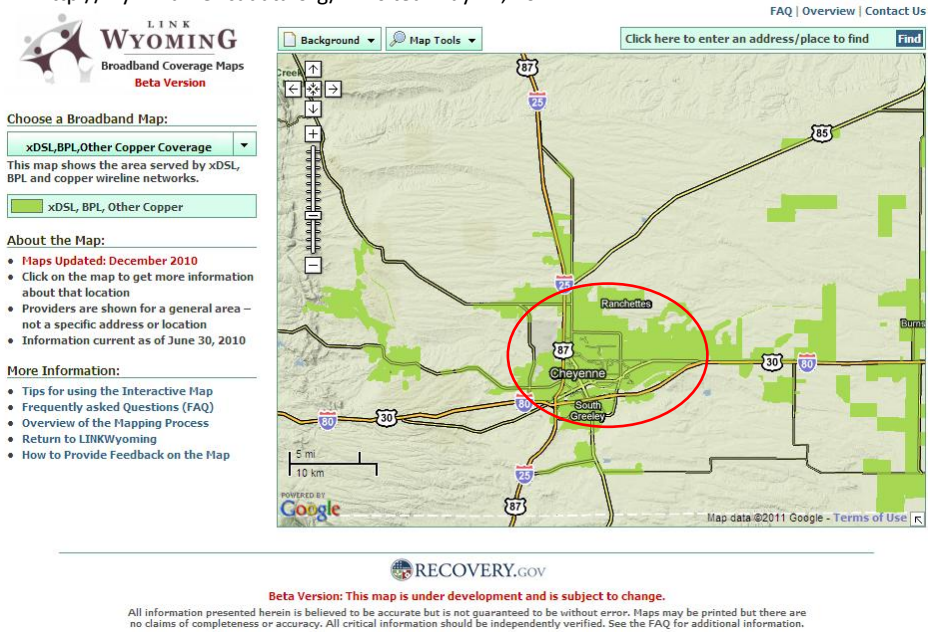
<sup>7</sup> This is an obligation larger carriers have long sought to be relieved of in Wyoming and elsewhere.

<sup>8</sup> Population data from City-Data.com, visited September 2, 2011.

<sup>9</sup> Ms. Kristin Lee, Regulatory Affairs for CenturyLink in Wyoming, WyPSC Technical Conference, August 18, 2011.

**Figure 2**

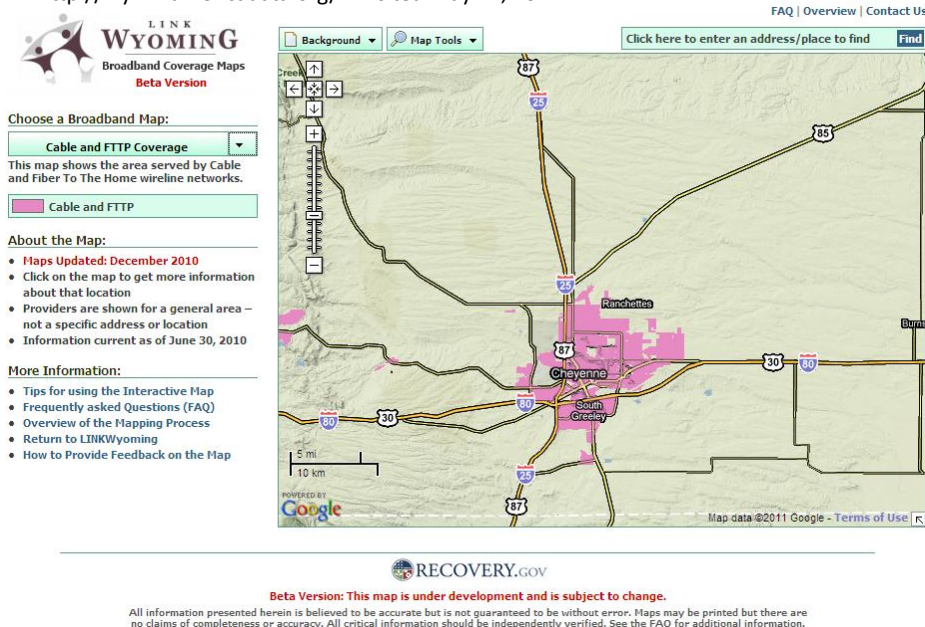
<http://wy.linkamericadata.org/> Visited May 12, 2011



**Figure 3** shows the service area for the primary competition for broadband in Wyoming, Cablevision/Bresnan in pink.

**Figure 3**

<http://wy.linkamericadata.org/> Visited May 12, 2011



Our small rate-of-return incumbent rural carriers typically have business plans that do not split up investment between highly profitable competitive areas and low revenue high cost areas. They normally have high cost areas and business plans suited to those areas. But the FCC and ABC plans indicate satellite technology will have to serve the highest cost areas now, undermining successful existing service.

### 3. Federal and State Statutes Protect the Interests of Consumers in High Cost Areas by Imposing Service Responsibilities on ILECs

The concept that people in the United States should have telecommunications service and someone to depend upon for that service is ingrained in the Communications Act of 1934. Section 201(a) of the Act is quite clear about the responsibility of telecommunications carriers to provide service. It states: "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable

request therefore; . . ."<sup>10</sup> Consonant with this, Section 1<sup>11</sup> of the 1934 Act, which states the overriding purpose of the Act, makes it clear that universal service in the United States with adequate facilities at reasonable charges is the fundamental goal of the entire law. It states:

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Likewise, and mindful of the nature of Wyoming's telecommunications markets, the Wyoming Telecommunications Act provides a similar safety net that telecommunications consumers in the state may depend upon to keep them from being summarily deprived of service. Written well after the federal provisions discussed, *supra*, our statutes acknowledge the need for readily available service while making reasonable provision for the emergence of competition. In that context, W.S. § 37-15-404, *Protection of telecommunications consumers*, provides, at subsection (c): "A telecommunications company providing a noncompetitive telecommunications service shall not discontinue providing the service without the commission's (WyPSC) approval."

Coupled with that, W.S. § 37-15-406(b), Wyoming's quality of service statute, provides:

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<sup>10</sup> 47 U.S.C. § 201(a)

<sup>11</sup> 47 U.S.C. § 151



Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company. A complaint shall be noticed and heard as provided for in the Wyoming Administrative Procedure Act. The commission, after notice and hearing, may direct the telecommunications company to take whatever remedial action is technically feasible and economically reasonable to provide reasonably adequate service. The commission shall authorize a telecommunications provider to recover the cost of compliance as reasonably determined by any commission order under this section.

If the FCC and ABC plans weaken carrier of last resort responsibilities, this will likewise weaken the federal and state safety nets put in place to ensure service for all and leaving satellite to pick up the pieces.

**C. The FCC Plan and the ABC Plan Conflict with the Telecommunications Act of 1996 by Failing to Provide Reasonable Comparability of Rates and Services Between Rural and Urban Areas**

Wyoming has certified for several years that its non-rural carrier rates are not reasonably comparable to the FCC's rate comparability benchmark, the estimated nationwide weighted urban rate plus two standard deviations. For example, just over half of the states filed rate comparability certifications in 2010, and the rate for Wyoming non-rural consumers, \$42.69 per line per month for Qwest in Zone 3 (*after* crediting the consumer for federal and state universal service fund contributions), is significantly above the FCC's rate comparability benchmark of \$36.52. The Wyoming rate is the highest reported by the 29 states that filed rate comparability certifications.<sup>12</sup> Furthermore, Wyoming's rural carrier consumers see even higher rates, with the highest cost-based local rates in Wyoming being \$80.76 per month (before credit for state and

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<sup>12</sup> Based upon a search of the FCC's Electronic Comment Filing System under Docket No. 96-45, filings received between August 15, 2010, and October 15, 2010, visited March 29, 2011.  
[http://fjallfoss.fcc.gov/ecfs/comment\\_search/input?z=on3lk](http://fjallfoss.fcc.gov/ecfs/comment_search/input?z=on3lk)

federal universal service fund support).<sup>13</sup> Reforms that ignore state effort and circumstances will harm existing frameworks that currently appear more likely to achieve reasonable comparability.

#### **D. The FCC Plan and the ABC Plan Rely too Heavily on Unproven Modeling**

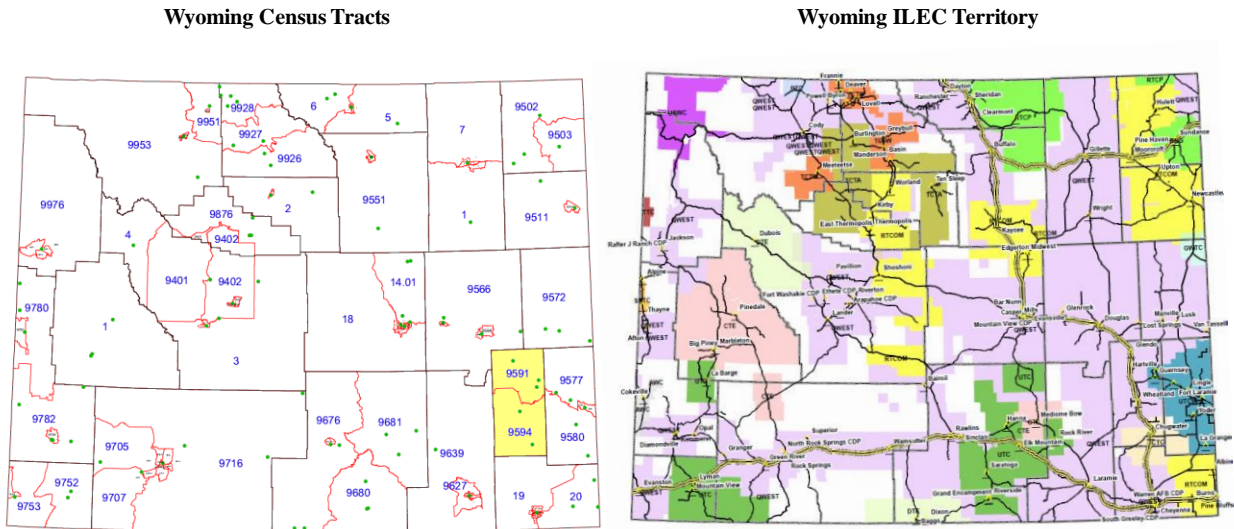
The FCC has proposed models and made assumptions designed to identify gaps in the nation's broadband network and to quantify the amount of support needed to close those gaps at minimal expense. Now the ABC Plan proposes the CQBAT model (which has not been well vetted). We have previously made it clear that models and assumptions cannot reliably identify broadband gaps or target support for rural areas in Wyoming. The models are absorbed in using census blocks, census tracts, and counties to simplify modeling efforts. We have previously shown the harm that this type of modeling approach will cause to Wyoming consumers. Modeling with a national focus may produce acceptable results for large and easily served urban markets and even for the nation in the aggregate; but, as the model approaches the extremities of rural markets, the results become unreliable and highly misleading.

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<sup>13</sup> Wyoming PSC 2010 Annual Report to the Legislature, Table 7. [http://psc.state.wy.us/htdocs/telephone\\_new.htm](http://psc.state.wy.us/htdocs/telephone_new.htm)

**Figure 4** illustrates how census tracts and census blocks are not congruent with local provider's service areas.

**Figure 4**



#### IV. CONCLUSION

In conclusion, we appreciate the opportunity to file these reply comments. Wyoming presents unique universal service challenges and we ask the FCC to carefully consider the matter.

Respectfully submitted September 6, 2011.

\_\_\_\_\_/s/  
ALAN B. MINIER, Chairman

\_\_\_\_\_/s/  
STEVE OXLEY, Deputy Chairman

\_\_\_\_\_/s/  
KATHLEEN A. LEWIS, Commissioner